

Attorneys for the Parties

For the Appellant

Anthony W. Overholt has extensive experience representing municipal entities as well as private companies. He is an experienced litigation attorney with numerous jury and bench trials in federal and state courts, with substantive concentrations in labor, employment discrimination, general litigation and constitutional law. He also has significant class-action and appellate experience. He has argued dozens of cases before Indiana appellate courts and the 7th U.S. Circuit Court of Appeals.

As part of his representation of local governments, he assists with negotiating collective bargaining agreements with public sector unions and has assisted in managing public relations strategies relating to those negotiations.

For the Appellee

Michael E. Morken was born in 1956 and grew up in Fort Wayne. He graduated from Indiana University in 1976 with a BA in Political Science and earned his law degree from Indiana University School of Law-Indianapolis in May 1981.

He was admitted to the Indiana Bar in 1981 and began his career as a deputy prosecutor for Marion County. He is currently a sole practitioner in Indianapolis, where he lives. He practices primarily in the fields of personal injury and family law.

Mr. Morken practices in the Indiana state courts and the U.S. District Court for the Southern District of Indiana. Mr. Morken is Chairman of the Indianapolis Metropolitan Police Department Merit Board, to which he was elected by the sworn police officers of the department. He has served continuously as a merit board member since 1988.

Social Media and the Courts

Sometimes we're so steeped in things we don't really notice them. Take social media; we spend so much time texting, tweeting, Facebooking, etc., that it's like water to a fish – just part of our world.

But Courts don't swim so easily in that environment. After all, social media is frothy, effervescent and bubbling with *now*. Courts are sober, slow and cautious.

Nor are Courts well suited to another defining characteristic of new media: the "anything goes" quality of so much Facebook, Twitter and YouTube content.

Yet Courts aren't blind to technology, as proved by even a quick glance at the Indiana judiciary's website, courts.in.gov. As further evidence, one-third of ranking Court officials who responded to a national survey on new media said they have used social media in either their professional or personal lives.

Still, the question arises: Can Courts tap the power and dynamism of new media while still honoring the integrity and responsibilities that rightly fall to America's third great branch of government?

@incourts offers one approach to that question. Launched at the direction of former Indiana Supreme Court Chief Justice Randall Shepard, @incourts has 2,598 followers and has sent more than 970 tweets.

Followers include @PBhere/Courts-that-twitter, which offers a handy portal to tweets from state-level Courts around the country, including

Appellate Courts.

Even the U.S. Supreme Court has a Twitter account, @USSupremeCourt.

True, a typical Court tweet isn't exactly "Jersey Shore" material. Judge Snooki is not in session! But tweets and retweets about anticipated opinions or new Court procedures can be of significant service to a host of professional, media and lay people who closely follow the law and legal developments.

Having said all that, the Courts and social media aren't exactly locked in tight embrace. According to the above-mentioned survey (conducted by the Conference of Court Public Information Officers), less than 7 percent of Courts have social media profile sites such as Facebook, and only 7 percent use Twitter or similar microblogging tools.

Ethical concerns may explain those low adoption rates. Almost half the judges who responded to the survey disagreed with the idea that they could use social media in their professional lives without compromising professional codes of conduct.

As Judge Edward W. Najam Jr., of the Court of Appeals of Indiana has said, "A court speaks through its opinions" and not through public commentary in new or old media.

As always, the future requires a "stay tuned" caveat. But who would be surprised if young people and their still-evolving dance with social media end up shaping the Courts' approach to new media in unexpected ways?

Judge Bradford, cont.

from Indiana University School of Law-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases.

He has taught Indiana Continuing Legal Education Foundation trial practice seminars for more than 10 years and also teaches Forensic Science and the Law at IUPUI, where he is an adjunct instructor.

He and his wife, Sam, a full-day kindergarten teacher, have five adult children.

Appeals on Wheels

The Court of Appeals hears oral arguments across Indiana to enable Hoosiers to learn more about the judiciary's indispensable role in Indiana government.

Since its 2000-2001 centennial, the Court has held more than 380 "traveling oral arguments" at law schools, colleges, high schools and other venues.

Today's event is the Court's 11th traveling oral argument this year.

The opinion in today's case will be posted under "appellate opinions" on the court's website, www.courts.in.gov.

COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE INDIANA UNIVERSITY SOUTH BEND

Indianapolis Metro Police v. Prout

CRIMINAL LAW ISSUES:

- Whether the trial court abused its discretion in granting Prout's petition for expungement.
- Whether Prout was required to prove during expungement proceedings that he was not guilty of the underlying criminal charge.
- Whether IMPD's arguments ask this court to reweigh evidence and judge witness credibility.

ORAL ARGUMENT:

Thursday, April 10, 2014
11:30 a.m.

APPEAL FROM:

Marion Superior Court
The Honorable
Annie Christ-Garcia, Judge

Synopsis: Case No. 49A04-1306-CR-236

In April 2012, Donald A. Prout was arrested and charged with four counts of Class D felony theft based on evidence that he engaged in ghost employment with the Marion County Sheriff's Department on four occasions.

The State alleged that Prout clocked in at the Sheriff's Department and his part-time security job at the same time, and thus he received double pay for those hours reported to both entities. Prout pleaded not guilty on all counts.

In September 2012, the State dismissed all charges against Prout, citing "Evidentiary Problems."

In December 2012, Prout filed a verified petition for expungement of his arrest records pursuant to Indiana Code Section 35-38-5-1, which reads in relevant part as follows:

(a) Whenever:

- (1) an individual is arrested but no criminal charges are filed against the individual; or
- (2) all criminal charges filed against an individual are dropped because:
 - (A) of a mistaken identity;
 - (B) no offense was in fact committed; or
 - (C) there was an absence of probable cause;
 the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred....

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who repre-

- continued on p. 2

Synopsis, cont.

sent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

- (1) summarily grant the petition;
- (2) set the matter for hearing; or
- (3) summarily deny the petition, if the court determines that:

- (A) the petition is insufficient; or
- (B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.

(e) If a notice of opposition is filed

and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(f) After a hearing is held under this section, the petition shall be granted unless the court finds:

- (1) the conditions in subsection (a) have not been met;
- (2) the individual has a record of arrests other than minor traffic offenses; or
- (3) (3) additional criminal charges are pending against the individual.

Prout asserted that expungement was appropriate because no offense had been committed and there was an absence of probable cause. The Indianapolis Metropolitan Police Department (“IMPD”) filed a notice

of opposition to Prout’s petition. After a hearing, the trial court granted Prout’s petition.

On appeal, IMPD argues that the trial court abused its discretion in granting Prout’s petition for expungement because probable cause existed both at the time of Prout’s arrest and at the time the charges were dismissed.

The parties argue about which time in the proceedings – at arrest or at dismissal – that probable cause is required under Indiana Code Section 35-38-5-1. IMPD also asserts that Prout did not prove that he did not commit theft, which was his burden in the expungement proceedings.

Prout asserts that IMPD’s arguments are requests for this Court to reweigh the evidence and judge the credibility of witnesses.

Indiana 1891: Every docket tells a story

Indiana Appellate Court Reports, Vols. 1, 2, and 3, include the complete written opinions of several hundred cases decided by the court in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana’s economy and society circa 1891 – the same year James Naismith invented basketball.

Agriculture was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter’s cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, “cows were permitted to run at large within the city (of Noblesville) within the day time.”

Railroads were frequent litigants. *Vols. 1, 2, and 3* record 34 railroad-related appeals, many involving damages to livestock, but also other issues. In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company “if unnecessary force was

used in expelling the appellee from the train.”

Vol. 1 also includes two cases involving The Western Union Telegraph Co. One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies “shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality.”

Then as now, fraught **domestic relations** occupied a significant share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who’d been sued by his daughter for nonpayment of \$3 a week for house and farm work.

Marshall et al v. Bell involved a father’s promissory note for support and maintenance of a “bastard child.”

And in *Adams v. Main*, the court affirmed a trial court’s judgment that

the appellant had alienated the affections of the appellee’s wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

Contract disputes comprised a large part of the docket, too, and some describe prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of “grade No. 2 red wheat” from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (In December 2013, March 2014 wheat deliveries were trading at \$6.39/bushel at the Chicago Board of Trade.)

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

Vols. 1, 2, and 3 include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as “a certain house of ill fame” in Valparaiso).

The court affirmed the trial court’s decision 13 times, or 72 percent.

Today’s Panel of Judges

The Honorable
Terry A. Crone
(St. Joseph County)

Terry A. Crone was appointed to the Court of Appeals March 8, 2004 by Governor Joseph E. Kernan. Judge Crone was raised in South Bend. He graduated cum laude from DePauw University with a double major in political science and history in 1974 and graduated from Notre Dame Law School in 1977.

Judge Crone practiced law for nine years, concentrating in areas of civil practice, and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, he was appointed Magistrate of the St. Joseph Circuit Court, where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989.

Judge Crone is a past President of the St. Joseph County Bar Association and a former member of the Board of Managers of the Indiana Judges Association, the Supreme Court Committee on Character and Fitness, and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference.

Judge Crone is a past Chair of the Appellate Practice Section of the Indiana State Bar Association and is a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations, the American Judicature Society, and the Phi Delta Phi Honorary Legal Society.

Judge Crone is a frequent speaker at legal education programs. He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs.

As Circuit Court judge, he also initiated the first Spanish-speaking program for public defenders in St. Joseph County.

Judge Crone was retained on the Court by election in 2006. He is married and has three daughters.

The Honorable
Melissa S. May
(Vanderburgh County)

Born in Elkhart, **Melissa S. May** studied criminal justice at *Indiana University-South Bend* before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission (for the public good), Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.

The Honorable
Cale J. Bradford
(Marion County)

Cale J. Bradford has broad experience in both the state and federal legal systems, including service as a Marion County deputy prosecutor, a public defender, a federal prosecutor, a trial court judge and appellate court judge. He also has six years’ experience in private legal practice.

He was appointed to the Court of Appeals of Indiana by Gov. Mitch Daniels and took his seat on Aug. 1, 2007. Since then he has participated in more than 2,000 appellate decisions and 80 oral arguments and has written more than 700 majority opinions.

Before joining the Appeals Court, he served the people of Marion County for more than 10 years as Judge of the Marion Superior Court, including two terms as Presiding Judge.

In that time, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county’s response to criminal justice problems, including jail crowding, staffing and budgets. Those efforts led to the end of 30 years of federal oversight of the Marion County Jail.

He also led the Annie E. Casey Foundation Juvenile Detention Alternative Initiative to create responsible alternatives to juvenile incarceration.

Before that, he worked two years in the Marion County Prosecutor’s Office, overseeing a staff of more than 100 attorneys. As an Assistant United States Attorney for the Southern District of Indiana for five years, he prosecuted major felony drug trafficking cases. He engaged in private law practice from 1986 to 1991, and has served as both a deputy prosecutor and public defender.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D.

- continued on p. 4